IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL MISC. PETITION NO.118/2006
(Hanumana Ram & Ors. Vs. State & Ors.)

Date of order : August 10, 2006

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. G.R. Punia, for the petitioners.
Mr. Ashok Upadhyay, Public Prosecutor.
Mr. I.R. Choudhary, for non-petitioner.

By way of filing the present petition under Section 482 Cr.P.C., the petitioners have prayed for quashing of order dated 21.12.2005 passed by learned Civil Judge (JD) & Judicial Magistrate, First Class, Deedwana in FR Case No. 32/05 (39/05) arising out of F.I.R. No.75/2005 PS Khunkhuna.

It is contended by the learned counsel for the petitioners that complainant Jawana Ram lodged a complaint before the learned Civil Judge (JD) & Judicial Magistrate Ist Class, Deedwana on 27.7.2005 stating that on 25.7.2005 at about 4.00 p.m., Food

Inspector and R.I., Deedwana arrived in the Panchayat Bhawan and were recording statements of the villagers in an enquiry against his uncle – Chaina Ram and as per the allegation, Sarpanch Hanumana Ram asked one witness not to give statement in favour of Chaina Ram. Upon which, the said person replied that he is not giving statement in favour of anyone and he is narrating the true story. Upon this reply of said witness, Sarpanch Hanumana Ram – petitioner No.1 and his other supporters started beating and all the petitioners also entered into the house of complainant and gave 'lathi' blow and when he fell down, they gave beating by kicks and abused him of filthy language. At that time wife of complainant – Radha arrived and requested the accused-petitioners to leave her husband but she was also beaten by them and they also torned out her clothes. The said complaint was forwarded by Magistrate under Section 156 (3) Cr.P.C. to S.H.O. PS Khunkhuna for investigation. The FIR being No.75/2005 was registered against the petitioners on 2.8.2005 for offence under Sections 143/323. 452, 504 and 354 IPC and Section 3 (1) (x) (xi) of SC/ST (Prevention of Atrocities) Act.

After investigation, the Investigating Officer submitted final negative report before the learned Magistrate. The Investigating Agency also mentioned about the contemplation of separate complaint against respondent under Section 211 I.P.C.

Before the Magistrate, a protest petition was filed by complainant. Upon which, after recording the statement under Sections 200 and 202 Cr.P.C., learned Magistrate proceeded to take cognizance against all the petitioners and issued summons against them vide order dated 21.12.2005.

The petitioners have challenged the validity of the order dated 21.12.2005 on the ground that the learned Magistrate has abused the process of court in discarding the final negative report and committed an error while taking cognizance against the petitioners. It is contended that no reasons whatsoever were assigned while discarding the final negative report submitted by Investigating Agency and cognizance was taken on the basis of protest petition and statement of complainant without scrutinizing the material submitted by the Investigating Agency along with the final report. Therefore, the order impugned passed by learned Magistrate is nothing but abuse of process of court and thus, to secure the ends of justice, it is prayed that the cognizance order may be quashed.

It is also contended by the learned counsel for the petitioners that the complaint was filed by complainant at the instance of his uncle – Chaina Ram, who is retailer (authorized dealer) of the Fair Price Shop and since there was a complaint against said Chaina Ram of misappropriating the controlled articles

and consequently this authorization was cancelled by the District Supply Officer, Nagaur. Therefore for implicating him in a false case, the respondent No.2 Jawana Ram filed false complaint, which was also not found to be true by the Investigating Agency but the learned Magistrate upon the protest petition took cognizance against the petitioners without assigning any reasons for discarding with the final negative report.

Learned counsel for the petitioners has invited the attention of this Court towards the judgment rendered by Hon'ble Supreme Court in case of Adalat Prasad Vs. Rooplal Jindal & Ors., reported in (2004) 7 SCC 338 and contended that the order of taking cognizance can be challenged by way of filing petition under Section 482 Cr.P.C. Likewise while citing the judgment in case of Bhagwan Sahai Khandelwal Vs. State, reported in 2006 (2) RDD 979 (Raj.) and in case of Om Prakash Mathur Vs. State of Rajasthan & Ors., reported in 2004 (1) Cr.L.R. (Raj.) 816, it is prayed by the learned counsel for the petitioners that as per the aforesaid judgments, the Magistrate was required to assign reasons while discarding with the final negative report, therefore, the order impugned deserves to be quashed.

Learned Public Prosecutor as well as learned counsel appearing on behalf of respondent No.2

vehemently opposed the petition and prayed that the order impugned dated 21.12.2005 is an order taking cognizance, therefore, the instant petition under Section 482 Cr.P.C. is not even maintainable. Many a judgments have also been cited by the learned counsel for the respondent that no interference under Section 482 Cr.P.C. against the order of cognizance is warranted and the order impugned is perfectly legal order. Further, it is submitted that the contention of the counsel for the petitioners is also not tenable that the learned Magistrate has not applied his mind and has not considered the entire record of the case. It is vehemently argued by the learned counsel for the respondent that the learned Magistrate has not only taken into consideration the statement under Section 173 Cr.P.C. but also taken into account the entire record of Final Report and statement recorded under Sections 200 and 202 Cr.P.C. and rightly taken cognizance, which is not erroneous and no interference is warranted under Section 482 Cr.P.C.

I have heard learned counsel for the petitioners as well as learned Public Prosecutor and the learned counsel appearing on behalf of respondent. I have also perused the impugned order as well as the record of the case.

In the case at hand, the Magistrate while passing the impugned order specifically mentioned that

I have considered the statement recorded under Section 161 Cr.P.C. and entire facts of the file and the statement recorded under Section 200 and 202 Cr.P.C. It was also observed in the impugned order that upon the perusal of these statements and material on record prima facie case is made out against the petitioners. The Magistrate has narrated the evidence and facts of the case also and thereafter, he proceeded to take cognizance against the petitioners. In the statement recorded under Section 161 Cr.P.C., it was categorically stated by Jawana Ram, Smt. Radha and Hari Ram that Jawana Ram was beaten by the petitioners. Likewise in the statement recorded under Section 200 and 202 Cr.P.C. by the learned Magistrate upon the protest petition, Jawana Ram – complainant, Hari Ram, Smt. Radha and Dalla Ram have categorically stated on oath that Jawana Ram was beaten by the petitioners and they used filthy language. Learned Magistrate while passing the order impugned has considered entire material on record.

The controversy involved in the present case is squarely covered by the judgment cited by learned counsel for the petitioners in case of Bhagwan Sahai Khandelwal & Anr. Vs. State & Ors. (supra) wherein the Coordinate Bench of this Court while following the judgment rendered by Hon'ble Supreme Court in case of Sampat Singh Vs. State of Haryana, reported in 1993 SCC (Cri) 376 has held as follows :-

"6. Life and personal liberty of every person is of utmost importance. Hence life and personal liberty cannot be interfered with without a reasonable cause and without a procedure established by law. Taking of cognizance is, thus, a serious matter. For it involves disturbing the life and personal liberty of a person. Facing of a criminal trial is an ordeal, which adversely affects the reputation, the finance, the energy and the time of the alleged offender. Thus, taking of cognizance cannot be done in a mechanical manner. It should be done after a judicious application of mind to the facts and circumstances of each case. Although, a meticulous examination of evidence is not required at the stage of taking cognizance, but the Magistrate must consider the case in a holistic manner. Piecemeal consideration of the evidence does not commensurate with the judicial vision. Hence, in case a FIR or a complaint is followed by a negative Final Report, which is subsequently followed by a protest petition, while allowing the protest petition, a Judicial Magistrate is legally bound to discuss the negative Final Report. Such a discussion is warranted for three reasons; firstly, the principles of natural justice demand and dictate that any order adversely affecting a right should be a speaking order. Although a elaborate discussion may not be required, but the order must contain sufficient reasons showing the application of a judicious mind, for disagreeing with the negative Final Report. Secondly, since the cognizance order is a revisionable order, the higher judicial authorities have a right to know the reasons, which weighed in the mind of the Judicial Magistrate for disagreeing with the negative Final Report. In the absence of such reasons, the high judicial authorities (the Sessions Court of the High Court) are left in the dark. Thirdly, it is a settled doctrine of law that "justice should not only be done, but also must appear to be done". Therefore, the accused has a right to know the reasons why the learned Judicial Magistrate has

> disagreed with the negative Final Report submitted by the police after a thorough investigation. In case, such reasons are not stated, alleged offender may find it difficult to question the validity of the reasoning, hence a cryptic order is not a judicious order whereas cognizance order should always be a judicious order."

> "9. In the present case, despite the existence of a negative Final Report, the learned Judicial Magistrate has merely mentioned that the police has submitted a negative Final Report on the basis of which the complainant has filed the protest petition. Learned Judicial Magistrate has neither bothered to tell us what are the findings of the police after a thorough investigation, nor bothered to tell us why he disagrees with the findings of the Investigating Agency. He has merely discussed the statements recorded under Sections 200 and 202 CrPC without stating any reason for disagreeing with the negative Final Report. Hence, the impugned order is a non-speaking order, which suffers from the virus of non-application of mind. Therefore, the impugned order deserves to be quashed and set aside."

It is obvious from the facts of the present case also that in the impugned order though the learned Magistrate took cognizance against the petitioners while taking into account the statements recorded under Section 161 Cr.P.C. and the statements recorded under Sections 200 and 202 Cr.P.C. in support of the protest application of the complainant but no reasons whatsoever have been assigned for disagreeing with the Final Report given by the Investigating Officer. Accordingly, while following the judgment rendered in Bhagwan Sahai Khandelwal (Supra), the

order impugned dated 21.12.2005 passed by learned Civil Judge (JD) & Judicial Magistrate, First Class, Deedwana in FR case No.32/05 (39/05) arising out of F.I.R. No.75/2005 PS Khunkhuna is set aside. The matter is remitted to the trial court to rehear the prosecution and to examine and discuss the negative final report and to pass reasoned order. It is expected from the trial court to carry out the aforesaid exercise within a period of one month from the date of receipt of a certified copy of this order.

With the aforesaid observations and directions, the petition stands allowed.

(GOPAL KRISHAN VYAS), J.

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